

Richard M. Heimann (State Bar No. 63607)  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, California 94111  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

*Co-Lead Counsel for the Direct Purchaser Plaintiffs*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL)  
ANTITRUST LITIGATION

Case No. MDL 3:07-md-1827 SI

CLASS ACTION

This Document Relates to:

ALL DIRECT PURCHASER CLASS  
ACTIONS

**DECLARATION OF RICHARD M.  
HEIMANN IN RESPONSE TO BARRY  
HIMMELSTEIN'S OBJECTION TO  
SETTLEMENT**

Date: December 19, 2011  
Time: 4:00 p.m.  
Ctrm.: 10, 19th Floor

The Honorable Susan Illston

I, Richard M. Heimann, declare as follows:

1. I am a partner with the law firm of Lief Cabraser Heimann & Bernstein, LLP. My firm is counsel to A.M. Photo & Imaging Center, Inc., a plaintiff in this action. I make this Declaration based on my personal knowledge. If called as a witness, I could and would competently testify to the matters stated herein.

2. Lief Cabraser Heimann & Bernstein, LLP ("LCHB") is currently engaged in litigation with Barry Himmelstein, who was formerly a LCHB partner. In March 2011, the LCHB partners unanimously voted to expel Himmelstein from the partnership. Himmelstein's claims against the firm, originally filed by him in the Superior Court, San Francisco, have by court order been directed to binding arbitration and are currently pending unresolved. The

1 dispute arises from and relates to Himmelstein's relationship to the firm, and includes, among  
2 other things, his demand that the firm be dissolved and that he be paid substantial sums of money.  
3 The dispute is unrelated to this *TFT-LCD* litigation. Himmelstein is represented in the arbitration  
4 by Pierce O'Donnell.

5         3. At the request of Himmelstein, through his counsel, legal counsel for LCHB met  
6 with O'Donnell and Himmelstein on Tuesday, November 22, 2011, ostensibly to discuss the  
7 possible settlement of the claims pending in the arbitration proceedings. I have been informed  
8 that, during the course of that meeting, O'Donnell and Himmelstein presented a draft "Objection  
9 to Direct Purchaser Class Settlements and Plaintiffs' Motions for Attorneys Fees" in this case. I  
10 have also been informed that, at the conclusion of the meeting, O'Donnell stated that given the  
11 urgency involved due to the deadline for the filing of objections to the *LCD* settlement, he and  
12 Himmelstein wanted to meet on Sunday or Monday with an LCHB partner with authority to  
13 speak for the firm.

14         4. I agreed to meet with O'Donnell and Himmelstein. That meeting took place on  
15 Monday morning at the offices of Long & Levit LLP. Present at the meeting were myself, Joseph  
16 McMonigle, Douglas Melton, Kathleen M. Ewins, Pierce O'Donnell and Barry Himmelstein. At  
17 the outset of the meeting, Mr. McMonigle presented an agreement in writing which he indicated  
18 was intended to cover both the prior meeting and the current. All of the attendees read and signed  
19 the agreement at that time in my presence.

20         5. During the course of the meeting, O'Donnell and Himmelstein stated that if LCHB  
21 agreed to a settlement of the claims in arbitration, including agreeing to pay multiple millions of  
22 dollars to Himmelstein, Himmelstein would not interpose an objection to the *TFT-LCD*  
23 settlement. On the other hand, they both made clear that if LCHB refused to agree to such a  
24 settlement, Himmelstein would file his objection and would oppose the *TFT-LCD* settlement and  
25 the request for attorney fees.

26         6. This is not the first time, since his expulsion from LCHB, that Himmelstein has  
27 attempted to interfere in a case where LCHB is counsel. LCHB attorneys are members of the  
28 plaintiffs' leadership group in *In re: Checking Account Overdraft Litigation*, MDL No. 2036.

1 LCHB attorneys were among the principle negotiators of a major settlement with the Bank of  
2 America, one of the defendants in the case, providing for the payment of some \$400 million. The  
3 fairness hearing on that settlement, together with the related attorneys' fee application, was held  
4 on November 7, 2011 before District Judge James Lawrence King, presiding over the MDL  
5 proceedings. Himmelstein, purportedly on behalf of two class members, objected to the fairness  
6 of the settlement itself and to the requested attorneys' fees. Judge King approved the settlement  
7 and attorneys' fee award; final judgment of approval was entered on November 22, 2011. The  
8 time for filing appeals from the final order approving the settlement expires on December 22,  
9 2011.

10 7. Towards the end of the November 28, 2011 meeting with Himmelstein and  
11 O'Donnell, we informed Himmelstein and O'Donnell that if Himmelstein abused the legal  
12 process by filing an objection to the *TFT-LCD* settlement in an effort to gain a tactical advantage /  
13 extort a settlement in a collateral dispute, I would bring to the attention of the Court the substance  
14 of the discussions at the meetings on November 22 and November 28, 2011. Himmelstein and  
15 O'Donnell both objected claiming in effect that the discussion was confidential and not properly  
16 subject to disclosure for any purpose. I indicated that I held a contrary view. At that point, the  
17 meeting came to an end.

18 8. While I disagree with Himmelstein's and O'Donnell's position regarding the  
19 extent to which the parties' agreement precludes disclosure of the details of the meetings, I have  
20 refrained in this declaration from providing details of the parties' statements. Should the Court  
21 request further information, I and my counsel are prepared to provide additional testimony or  
22 evidence in camera or in open court as the Court deems appropriate.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct.

25 Executed on December 5, 2011 at San Francisco, California.

26  
27 /s/ Richard M. Heimann  
RICHARD M. HEIMANN